

ORIGINAL



0000081086

03

RECEIVED
BEFORE THE ARIZONA CORPORATION COMMISSION

2008 JAN 22 P 4: 47

MIKE GLEASON

Chairman

WILLIAM MUNDELL

Commissioner

JEFF HATCH-MILLER

Commissioner

KRISTIN MAYES

Commissioner

GARY PIERCE

Commissioner

AZ CORP COMMISSION
DOCKET CONTROL

T-010518-07-0693

IN THE MATTER OF QWEST
CORPORATION'S PETITION FOR
ARBITRATION AND APPROVAL OF
AMENDMENT TO INTERCONNECTION
AGREEMENT WITH ARIZONA
DIALTONE, INC. PURSUANT TO
SECTION 252(B) OF THE
COMMUNICATIONS ACT OF 1934, AS
AMENDED BY THE
TELECOMMUNICATIONS ACT OF 1996
AND APPLICABLE STATE LAWS

DOCKET NO. T-03608A-07-0693

ARIZONA DIALTONE, INC.'S
ANSWER TO QWEST
CORPORATION'S COMPLAINT

Arizona Dialtone, Inc. ("AZDT") hereby responds to the Complaint filed by Qwest Corporation ("Qwest"), as follows:

I. PARTIES

1. AZDT admits Paragraph No. 1 of the Complaint.
2. AZDT admits Paragraph No. 2 of the Complaint.
3. AZDT admits Paragraph No. 3 of the Complaint.
4. AZDT admits Paragraph No. 4 of the Complaint.

II. JURISDICTION

5. AZDT admits Paragraph No. 5 of the Complaint.

III. STATEMENT OF LAW AND FACTS

6. AZDT admits Paragraph No. 6 of the Complaint.

Arizona Corporation Commission

DOCKETED

JAN 22 2008

DOCKETED BY

nr

1 7. AZDT admits Paragraph No. 7 of the Complaint.

2 8. AZDT admits Paragraph No. 8 of the Complaint.

3 9. AZDT denies Paragraph No. 9 of the Complaint, and affirmatively alleges that
4 Qwest knowingly processed orders for new UNE-P services during the one-year transition period
5 and thereafter, and that AZDT paid Qwest for the UNE-P and POTS services at the rates invoiced
6 by Qwest, such that Qwest should now be estopped from collecting additional amounts from
7 AZDT for those services.

8 10. AZDT admits Paragraph No. 10 of the Complaint, except that AZDT denies that it
9 “has refused to implement the requirements of the TRRO,” and affirmatively alleges that, as
10 Qwest is aware, AZDT has been willing to sign a TRRO Amendment so long as that amendment
11 addresses not only the impact of the TRO and TRRO on the Interconnection Agreement (“ICA”)
12 between Qwest and AZDT, but also, AZDT’s ongoing billing disputes with Qwest which AZDT
13 has sought to resolve for several years without success.

14 11. AZDT denies the allegations of Paragraph 11 of the Complaint, except that AZDT
15 admits that “Qwest billed Arizona Dialtone for all UNE-P services received after the effective
16 date of the TRRO at the rate listed for UNE-P services in its interconnection agreement with
17 Qwest.”

18 12. AZDT denies Paragraph No. 12 of the Complaint.

19 13. AZDT denies Paragraph No. 13 of the Complaint.

20 14. AZDT is without knowledge or information sufficient to form a belief as to whether
21 the form of TRRO amendment that Qwest has offered to AZDT is substantially similar in all
22 material respects to the form of TRRO amendment that Qwest now offers to CLECs, and
23 therefore, denies same. AZDT denies the remaining allegations of Paragraph No. 14 of the
24 Complaint.

25 **COUNT I**

26 **Arizona Dialtone Breached Its Obligation To Enter An Amendment Reflecting The**

1 **FCC's Triennial Review Remand Order**

2 14. AZDT admits that it is obligated to negotiate a TRRO amendment in good faith
3 upon a change of law, and further admits that Qwest has correctly quoted a portion of Section 2.2
4 of the ICA, but denies the remaining allegations of Paragraph No. 14 of the Complaint.

5 15. AZDT admits that it has refused to enter into an amendment that reflects only
6 certain terms of the TRRO, but affirmatively alleges that it has been willing to sign a TRRO
7 amendment so long as that amendment addresses not only the impact of the TRO and TRRO on
8 the ICA, but also, resolves AZDT's ongoing billing disputes with Qwest, including, without
9 limitation, the rates that AZDT is required to pay for UNE-P and POTS services during the one-
10 year transition period and thereafter.

11 16. AZDT denies Paragraph No. 16 of the Complaint.

12 17. AZDT denies Paragraph No. 17 of the Complaint

13 **COUNT II**

14 **Arizona Dialtone's Failure To Implement The TRRO Violates Law And The Parties'**

15 **Interconnection Agreement**

16 18. AZDT incorporates by reference the preceding 17 paragraphs of its Answer.

17 19. AZDT admits Paragraph No. 19 of the Complaint, except that AZDT denies the
18 allegation that it was "obliged to cease placing new orders for UNE-P services."

19 20. AZDT admits Paragraph No. 20 of the Complaint.

20 21. AZDT denies Paragraph No. 21 of the Complaint.

21 **COUNT III**

22 **Arizona Dialtone Breached Its Obligation To Properly Compensate Qwest**

23 22. AZDT incorporates by reference the preceding 21 paragraphs of its Answer.

24 23. AZDT denies Paragraph No. 23 of the Complaint.

25 24. AZDT denies Paragraph No. 24 of the Complaint.

26 25. AZDT denies Paragraph No. 25 of the Complaint, and AZDT affirmatively alleges

1 that Qwest knowingly processed orders for new UNE-P services during the one-year transition
2 period and thereafter, and that AZDT paid Qwest for the UNE-P and POTS services at the rates
3 invoiced by Qwest, such that Qwest should now be estopped from collecting additional amounts
4 from AZDT for those services.

5 26. AZDT denies Paragraph No. 26 of the Complaint.

6 27. As and for its affirmative defenses, AZDT alleges: (a) payment, (b) waiver, (c)
7 estoppel, (d) accord and satisfaction, and (e) setoff based on the billing disputes referenced in
8 Paragraph 18(b) of AZDT's Response to Qwest's Petition for Arbitration, which are incorporated
9 by reference herein.

10 **THEREFORE**, AZDT respectfully requests that this Commission grant the following
11 relief:

- 12 1. Denial of the Complaint in its entirety; and
13 2. An award of such other and further relief to AZDT as this Commission deems just
14 and proper.

15 **RESPECTFULLY SUBMITTED** this 22 day of January, 2008.

16 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**

17
18 By



19 Claudio E. Iannitelli, Esq.

20 Glenn B. Hotchkiss, Esq.

21 Matthew A. Klopp, Esq.

22 Attorneys for Arizona Dialtone, Inc.
23
24
25
26

1 ORIGINAL and 13 copies of the foregoing
hand-delivered this 22 day of January, 2008, to:

2 Docket Control
3 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
4 Phoenix, AZ 85007

5 COPY of the foregoing mailed
this 22 day of January, 2008, to:

6 Norman G. Curtright, Esq.
7 Qwest Corporation
20 East Thomas Road, 16th Floor
8 Phoenix, AZ 85012

9 By: 

10 N:\CLIENTS\Arizona Dialtone\Qwest 1183-13\Pleadings\Answer to Complaint - AZ.doc